

CACFP Policy Memorandum FY 2004-01

TO: **CACFP Sponsors**

FROM: **Paul McElwain, Director**
 School and Community Nutrition

RE: **Corrective Action for and Termination from the Child and Adult Care Food**
 Program for Renewing and Participating Institutions

DATE: **July 31, 2003**

LEGAL AUTHORITY: 7 CFR Part 226.6(c) and KY Department of Education 2002-01, (Rev. 2)

I. PURPOSE

The purpose of this policy is to explain the process by which participating institutions and renewing institutions in the Child and Adult Care Food Program (CACFP) correct findings and serious deficiencies, as well as to discuss termination of institutions from the CACFP.

II. APPLIES TO

This policy applies to all renewing institutions and participating institutions in the CACFP.

III. DEFINITIONS(S)

“Appeal” – means the fair hearing provided upon request to

1. An institution that is given notice by the Division of School and Community Nutrition (SCN) of any action or proposed action that will affect their participation or reimbursement under the Program.
2. A principal or individual responsible for an institution’s serious deficiency after the responsible principal and/or individual has been given notice of intent to disqualify from the Program.

“Disqualified” – means the status of an institution, a responsible principal or responsible individual, or a day care home provider that is ineligible for participation.

“FNS” – means the Food and Nutrition Service of the United State Department of Agriculture.

“FNSRO” – means the appropriate Regional Office of the United States Department of Agriculture’s Food and Nutrition Service.

“Institution” – means a sponsoring organization, child care center, outside-school hours care center, emergency shelter, or adult day care center which enters into an agreement with the Division of School and Community Nutrition (SCN) to assume final administrative and financial responsibility for Program operations. It also includes homeless shelters and “at-risk” after school care programs.

“National Disqualified List” – means the list, maintained by the United States Department of Agriculture, of institutions, responsible principals and individuals, and day care homes disqualified from participation in the CACFP.

“Notice” – means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by e-mail, that describes an action proposed or taken by the Division of School and Community Nutrition (SCN) or the Food and Nutrition Service (FNS) with regard to an institution’s CACFP reimbursement or participation. The notice must specify the action being proposed or taken and the basis for the action, and is considered to be received by the institution or day care home when it is delivered, sent by facsimile, or sent by e-mail. If the notice is undeliverable, it is considered to be received by the institution, responsible principal or individual, or day care home five days after being sent to the addressee’s last known mailing address.

“Office of the Attorney General” – means the executive state agency responsible for the impartial administration of appeals related to the KY Child and Adult Care Food Program (CACFP). This agency conducts the appeal. The Office of the Attorney General is not responsible for the management of the CACFP or accountable to the State Agency.

“Renewing Institution” – means an institution that is participating in the CACFP at the time it submits a renewal application.

“Responsible principal and/or responsible individual” means –

1. A principal, whether compensated or uncompensated, who SCN or FNS determines to be responsible for an institution’s serious deficiency;
2. Any other individual employed by, or under contract with, an institution or sponsored center, who SCN or FNS determines to be responsible for an institution’s serious deficiency; or
3. An uncompensated individual who SCN or FNS determines to be responsible for an institution’s deficiency.

“Seriously deficient” – means the status of an institution or day care home that has been determined to be non-compliant in one or more aspects of its operation of the CACFP.

“Serious Deficiency for Participating Institutions” – includes, but is not limited to, the following criteria under 7 CFR Part 226(c).

1. Submission of false information on the institution’s application, including but not limited to, a determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes: fraud, anti-trust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by SCN.

Other examples:

- Failure to disclose ineligible officers, directors, key employees.
 - Listing fictitious employees/officers/board members on an application.
 - Claiming tax-exempt status when denied, rescinded, etc.
 - Submitting the IRS tax-exempt determination letter of a different or even defunct organization.
 - Claiming non-existing/non-participating facilities, children, or adults.
 - Inflated meal counts.
 - Claiming non-existent costs.
 - Claiming costs disallowed or not included in the approved budget.
 - Claiming costs for fictitious employees.
 - Any information submitted to the State Agency that does not accurately reflect the institution’s operations.
 - Falsification of any documentation.
2. Permitting an individual who is on the National Disqualified List to serve in a principal capacity with the institution or, if a sponsoring organization, permitting such an individual to serve as a principal in a sponsored center or as a day care home provider;
 3. Failure to operate the CACFP in conformance with the performance standards (Financial Viability and Financial Management, Administrative Capability, and Program Accountability);
 4. Failure to comply with the bid procedures and contract requirements of applicable Federal procurement regulations.

Examples:

- Failure to competitively procure goods and services.
- Anti-competitive practices, such as collusion, kickbacks, conflicts of interest.
- Inclusion of non-competitive provisions in a bid, e.g. “successful bidder for a contract to provide meals must establish a scholarship fund”.

5. Failure to return to SCN any advance payments that exceeded the amount earned for serving eligible meals, or failure to return disallowed start-up or expansion payments.
6. Failure to maintain adequate records.

Examples:

- Sponsors who consistently have missing records during different reviews, complaint investigations, agreed-upon-procedures review, or audits.
- Missing/incomplete/different amounts or payees for invoices, receipts, canceled checks, inventories resulting in false/inflated/unsubstantiated claimed costs.
- Cost records not maintained according to generally accepted accounting principles resulting in false/inflated/unsubstantiated claimed costs.
- Missing/incomplete enrollment forms and/or income eligibility applications.
- Missing/incomplete master rosters and attendance records.
- Missing/incomplete Menu and Production Records.
- Missing/incomplete meal count records.

7. Failure to adjust meal orders to conform to variations in the number of participants.

Example:

- Inflated meal counts, the meals claimed always equals the number of meals ordered/planned or the number of participants on the center roster;

8. Claiming reimbursement for meals not served to participants.

Examples:

- Claiming meals delivered/planned for as meals served to participants.
- Claiming meals for participants not present on a given day or for a particular meal.
- Claiming meals served to non-existent children or adults.
- Claiming meals served to non-enrolled children and adults or to staff.
- Inflating facility meal counts.
- Claiming non-existent and non-participating facilities.
- Claiming meals for ineligible facilities.
- Knowingly claiming dual participation facilities.
- Claiming the same participant for the same meal at more than one facility;

9. Claiming reimbursement for a significant number of meals that do not meet CACFP requirements;

10. Use of a food service management company that is in violation of health codes;

11. Failure of a sponsoring organization to disburse payments to its facilities in accordance with federal regulations and in accordance with its management plan.

Examples:

- Checks prepared after 5 days.
 - Payments sent without endorsements or otherwise incomplete.
 - Payments made for other than the full amount the facility is entitled to.
 - Payments made to a facility other than the facility that earned the payment.
 - Payments made to an entity/person other than the facility (without express permission of the facility).
 - Checks not mailed within the 5-day time frame or first business day thereafter.
 - Failure to transfer the full amount of facility payments to payment bank account within the 5-day time frame.
 - Failure to maintain the full amount of facility payment in a commingled bank account until checks clear.
 - Using administrative or provider advance funds to pay ineligible facilities/providers.
 - Using provider reimbursement funds to pay provider advances.
 - Using day care home funds (advance or reimbursement) to pay sponsored centers and vice versa.
 - Retaining sponsored center funds in excess of the amount approved in the management plan;
12. Claiming reimbursement for meals served by a for-profit center during a calendar month in which less than 25 percent of its enrolled participants, or 25 percent of its licensed capacity, whichever is less, were free and reduced beneficiaries;
 13. Claiming reimbursement for meals served by a proprietary Title XIX adult day care center during a calendar month in which less than 25 percent of its enrolled adult participants were Title XIX beneficiaries;
 14. Failure by a sponsoring organization of day care homes to properly classify day care homes as Tier I or Tier II in accordance with federal regulations [7 CFR Part 226.15(f)];
 15. Failure by a sponsoring organization to properly train or monitor sponsored facilities in accordance with federal regulations [7 CFR Part 226.16(d)];
 16. Use of day care home funds by a sponsoring organization to pay for the sponsoring organization's administrative expenses;
 17. Failure to perform any of the other financial and administrative responsibilities required by federal regulations;
 18. Failure to properly implement and administer the day care home termination and administrative hearing provisions set forth in the federal regulation [7 CFR Part 226.16(1)];

19. The fact that the institution or any of the institution's principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or is now eligible to participate in, that program, including the payment of any debts owed;
20. Conviction of the institution or any of its principals for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes fraud, anti-trust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by SCN; and
21. Any other action affecting the institution's ability to administer the Program in accordance with Program requirements.

“Serious deficiencies for Renewing institutions” – includes, but is not limited to, the following criteria provided under 7 CFR Part 226.6(c).

1. Submission of false information on the institution's application, including but not limited to, a determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes: fraud, anti-trust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by SCN;
2. Failure to operate the CACFP in conformance with the Performance Standards (Financial Viability and Financial Management, Administrative Capability, and Program Accountability);
3. Failure to comply with the bid procedures and contract requirements of applicable Federal procurement regulations;

Examples:

- Failure to competitively procure goods and services.
 - Anti-competitive practices, such as collusion, kickbacks, conflicts of interest.
 - Inclusion of non-competitive provisions in a bid, e.g. “successful bidder for a contract to provide meals must establish a scholarship fund.”;
4. Use of a food service management company that is in violation of health codes;
 5. Failure by a sponsoring organization of day care homes to properly classify day care homes as Tier I or Tier II in accordance with federal regulations [7 CFR Part 226.15(f)];

6. Failure by a sponsoring organization to properly train or monitor sponsored facilities in accordance with federal regulations [7 CFR Part 226.16(d)];
7. Failure to perform any of the other required financial and administrative responsibilities required by federal regulations;
8. Failure to properly implement and administer the day care home termination and administrative review provisions [7 CFR Part 226.16(l)]; and
9. Any other action affecting the institution's ability to administer the CACFP in accordance with CACFP requirements.

"Suspended" means the status of an institution or day care home that is temporarily ineligible for participation, including receiving program payments.

IV. POLICY

The Division of School and Community Nutrition (SCN) works to ensure that the Child and Adult Care Food Program (CACFP) is operated with integrity. SCN works to ensure program integrity, in large part, by monitoring institutions that are participating in the CACFP. Findings of violations of program requirements may result from any of the following types of monitoring visits:

- Administrative reviews by State Agency staff;
- Follow-up reviews;
- Annual Audit;
- Agreed-Upon-Procedures reviews; and
- Complaint investigations.

Based on the finding(s) or other information received, SCN will determine whether to classify a finding as an isolated error or as a serious deficiency. An institution may be declared seriously deficient at any time any of the criteria provided under Title 7 of the Code of Federal Regulations, Section 226.6(c) is met. If SCN determines that a renewing or participating institution has committed one or more serious deficiencies, SCN will provide the institution and responsible principals and/or individuals notice of the serious deficiency (ies) and an opportunity to take corrective action. However, if timely corrective action is not taken to fully and permanently correct the serious deficiency (ies), SCN will deny the institution's application for participation, propose to terminate the institution's agreement and disqualify the responsible principals and/or individuals. The institution may seek an appeal of the application denial and proposed disqualification. (See Appeal Procedures)

According to federal regulations [7 CFR Part 226.6(c)], a serious deficiency determination by SCN is not subject to appeal.

V. PROCEDURE(S)

I. Renewing Institutions

If SCN determines that a renewing institution has committed one or more serious deficiency, SCN will notify the institution's executive director and chairman of the board of directors that the institution has been determined to be seriously deficient. The notice will identify and be sent to the responsible principals and/or individuals. The notice will specify:

1. The serious deficiency (ies);
2. The actions to be taken and the outcome needed to correct the serious deficiency;
3. The time allotted to correct the serious deficiency;
4. That the serious deficiency determination is not subject to appeal;
5. That failure to fully and permanently correct the serious deficiency (ies) within the allotted time will result in SCN's denial of the institution's application, the proposed termination of the institution's agreement (if SCN has temporarily extended the agreement pursuant to 7 CFR Part 226.6(c)(2)(iii)(D) and the proposed disqualification of the institution and the responsible principals and/or individuals; and
6. That the institution's voluntary termination of its agreement with SCN after having been notified that it is seriously deficient will still result in the institution's formal termination by SCN and placement of the institution and its responsible principals and/or individuals on the National Disqualified List.

SCN will add the institution to SCN's list of seriously deficient institutions, along with the basis for the serious deficiency determination, and provide a copy of the notice to FNSRO.

CORRECTIVE ACTION

If corrective action is taken to fully and permanently correct the serious deficiency (ies) within the allotted time and to SCN's satisfaction, SCN will notify the institution's executive director and chairman of the board of directors, and the people identified as the responsible principals and/or individuals that SCN has rescinded its serious deficiency determination, and offer the renewing institution the opportunity to resubmit its application. If corrective action is complete for the institution but not for all of the responsible principals and/or individuals (or vice versa), SCN will continue with the application denial and proposed disqualification of the remaining parties. When this notice is issued, SCN will also update SCN's list of seriously deficient institutions to indicate that the serious deficiency (ies) has been corrected and provide a copy of the notice to FNSRO. The renewing institution will be provided the opportunity to resubmit its application.

DENIAL OF APPLICATION

If timely corrective action is not taken to fully and permanently correct the serious deficiency (ies), SCN will notify the institution's executive director and chairman of the board of directors, and the responsible principals and/or individuals, that the institution's application has

been denied. At the same time the notice is issued, SCN will update SCN's list of seriously deficient institutions and will provide a copy of the notice to FNSRO. The notice will specify:

1. That the institution's application has been denied, and SCN is proposing to terminate their agreement and disqualify the institution and the responsible principals and/or individuals;
2. The basis for the actions;
3. That if the institution voluntarily terminates its agreement after receiving the notice of the proposed termination, the institution and the responsible principals and/or individuals will be disqualified;
4. The procedures for seeking an appeal of the application denial and proposed disqualifications; and
5. That the institution may continue to participate in the Program and receive reimbursement for eligible meals served and allowable administrative costs incurred until its appeal is completed.

If the renewing institution's agreement expires before the end of the time allotted for corrective action, and/or the conclusion of any appeal requested by the renewing institution, SCN will temporarily extend its current agreement with the renewing institution and continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred.

When the time for requesting an appeal expires or when the Attorney General's office upholds SCN's denial of the institution's application, the proposed termination, and the proposed disqualifications, SCN will notify the institution's executive director and chairman of the board of directors, and the responsible principals and/or individuals, that the temporarily-extended agreement has been terminated and that the institution and the responsible principals and/or individuals have been disqualified. At the time this notice is issued, SCN will update SCN's list of seriously deficient institutions and provide a copy of the notice and the mailing address and date of birth for each responsible principal and/or individual to FNSRO.

If the Attorney General's office overturns SCN's application denial and proposed disqualification, SCN will notify the institution's executive director and chairman of the board of directors, and the responsible principal and/or individuals that the application denial and proposed disqualification have been rescinded. At the time this notice is issued, SCN will also update SCN's list of seriously deficient institutions and provide of a copy of the notice to FNSRO.

II. Participating Institutions

A. FINDINGS CITED

When findings are cited, SCN will determine whether the finding is an isolated error or if the institution should be immediately declared seriously deficient.

If SCN determines that the institution has committed an isolated error, SCN will provide technical assistance, provide the opportunity for corrective action, and perform a follow-up visit to ensure that the institution has resumed continued compliance in all areas of CACFP

operations. If SCN determines that the institution is still non-compliant in one or more aspects of the CACFP during the follow-up visit, the institution will move to seriously deficient status.

B. SERIOUSLY DEFICIENT INSTITUTIONS

If SCN determines that a participating institution has committed one or more serious deficiency (ies), SCN will notify the institution's executive director and chairman of the board of directors that the institution has been determined to be seriously deficient. The notice will identify the responsible principals and/or individuals and will be sent to those persons as well. The notice will specify:

- 1.The serious deficiency (ies);
- 2.The action (s) to be taken to correct the serious deficiency (ies);
- 3.The time allotted to correct the serious deficiency (ies);
- 4.That the serious deficiency determination is not subject to appeal;
- 5.That failure to fully and permanently correct the serious deficiency (ies) within the allotted time will result in SCN's proposed termination of the institution's agreement and the proposed disqualification of the institution and the responsible principals and/or individuals; and
- 6.That the institution's voluntary termination of its agreement with SCN after having been notified that it is seriously deficient will still result in the institution's formal termination by SCN and placement of the institution and its responsible principals and/or individuals on the National Disqualified List.

SCN will also add the institution to SCN's list of seriously deficient institutions and send a copy of the serious deficiency notification to FNSRO.

CORRECTIVE ACTION

If the corrective actions are taken to fully and permanently correct the serious deficiency (ies) within the allotted time and the follow-up visit conducted by SCN reveals that the institution has resumed continued compliance in all areas of Program operations and no new findings are cited, the review is closed and the serious deficiency determination will be rescinded. SCN will notify the institution's executive director and chairman of the board of directors, and the responsible principals and/or individuals, that SCN has rescinded its serious deficiency determination. SCN will remove the institution from SCN's list of seriously deficient institutions and send a copy of the notice stating that the serious deficiency determination has been rescinded to FNSRO. If corrective action is complete for the institution but not for all of the responsible principals and/or individuals, SCN will continue with proposed termination and disqualification of the remaining parties.

INTENT TO TERMINATE

If, however, timely corrective action is not taken to fully and permanently correct the serious deficiency (ies), and/or additional findings are cited, SCN will notify the institution's executive director and chairman of the board of directors, and the responsible principals and/or individuals, that SCN is proposing to terminate the institution's agreement and to disqualify the

institution and the responsible principals and/or individuals. At the same time the notice is issued, SCN will update SCN's list of seriously deficient institutions and provide a copy of the notice of intent to terminate to the appropriate FNSRO.

The notice will specify:

1. That SCN is proposing to terminate the institution's agreement and to disqualify the institution and the responsible principals and/or individuals;
2. The basis for the actions;
3. That, if the institution voluntarily terminates its agreement after receiving the notice of proposed termination, the institution and the responsible principals and/or individuals will be disqualified;
4. The procedures for seeking an appeal of the proposed termination and disqualifications; and
5. That, unless participation has been suspended, the institution may continue to participate and receive Program reimbursement for eligible meals served and allowable administrative costs incurred until its appeal is completed.

Notice of intent to terminate is classified as an adverse action; therefore, the institution will be notified in writing of its right to appeal the proposed termination. (See Appeal Procedures)

Institutions participating in the CACFP that have received a notice of intent to terminate and appeal such adverse action will be reimbursed for all valid claims submitted to SCN that are supported by appropriate documentation during the appeals process. However, if the serious deficiency (ies) constitutes an imminent threat to the health or safety of participants, or the institution has engaged in activities that threatened the public health or safety, SCN may suspend the institution's participation (including all program payments). Also, if the serious deficiency is the submission of a false or fraudulent claim, SCN may suspend the institution's participation (including all program payments).

If an institution fails to appeal the notice of intent to terminate, or the decision to terminate is upheld by the Attorney General's office, and the institution has exhausted its appeal rights, SCN will issue a notice of termination. SCN will also notify the United States Department of Agriculture (USDA) that the institution's name should be placed on the National Disqualified List maintained by USDA. The names of applicable staff, owners, board members, and others who were responsible for operating the CACFP for the institution will also be placed on the National Disqualified List. All institutions, responsible principals and/or individuals that are placed on the National Disqualified List are disqualified from participation in the CACFP.

If the Attorney General's office overturns SCN's agreement termination and disqualification, SCN will notify the institution's executive director and chairman of the board of directors, and the responsible principals and/or individuals that the proposed termination and proposed disqualification have been rescinded. At the time this notice is issued, SCN will also update SCN's list of seriously deficient institutions and provide a copy of the notice to FNSRO.

VI. COMMENTS

Any questions concerning this policy should be directed to Denise Hagan at 502/564-5625.